THE HONORABLE JOHN C. COUGHENOUR 1 2 3 4 5 6 UNITED STATES DISTRICT COURT 7 WESTERN DISTRICT OF WASHINGTON AT SEATTLE 8 9 JOHN MIN, CASE NO. C11-0647-JCC (CR09-0083-JCC) 10 Petitioner, 11 **ORDER** v. 12 UNITED STATES OF AMERICA, 13 Respondent. 14 15 The Court, having reviewed petitioner's 28 U.S.C. § 2255 motion (Dkt. No. 1), the 16 parties' briefs, the Report and Recommendation of the Honorable Brian A. Tsuchida, United 17 States Magistrate Judge (Dkt. No. 10), the objection of the United States (Dkt. No. 11), and the 18 remaining record, finds and orders as follows: 19 1. The Report and Recommendation is **ADOPTED**; 20 2. Petitioner's § 2255 motion is **DENIED** as to **Claims 1, 2, 4, and 5**, and those 21 22 claims are **DISMISSED** with prejudice; 23 3. Petitioner is **DENIED** issuance of a certificate of appealability as to **Claims 1, 2,** 24 4, and 5; 25

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- 4. In light of the objection of the United States, the Court orders an evidentiary hearing to determine the veracity of petitioner's **Claim 3** allegation that defense counsel failed to file a notice of appeal after being directed to do so. This matter is **REFERRED** to U.S. Magistrate Judge Brian A. Tsuchida for an evidentiary hearing. The Criminal Justice Act (CJA) Panel is **DIRECTED** to appoint a new attorney for petitioner for the purpose of this evidentiary hearing;
- The Clerk shall send a copy of this Order to the parties and to Judge Tsuchida.
  DATED this 15th day of February 2012.

John C. Coughenour

UNITED STATES DISTRICT JUDGE

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